

FILED  
SCRANTON

DEC 04 2003

PER  CLERK

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN DOE, JOHN DOE, SR. and JANE  
DOE,

Plaintiff,

vs.

FATHER ERIC ENSEY, FATHER  
CARLOS URRUTIGOITY, DIOCESE OF  
SCRANTON, BISHOP JAMES C. TIMLIN,  
THE SOCIETY OF ST. JOHN, THE  
PRIESTLY FRATERNITY OF ST. PETER  
and ST. GREGORY'S ACADEMY,

Defendant.

Case No.: 3 CV 02-0444

FOURTH AFFIDAVIT OF JAMES  
BENDELL

James Bendell, being first duly sworn, deposes and states as follows:

1. I am one of the attorneys representing the plaintiffs in this case.
2. During the week of August 17, 2003, I flew to Scranton to conduct depositions in this case. During that week all counsel met to schedule an additional round of depositions of during November. All counsel agreed to set aside most of the week of November 10, 2003 for these depositions.
3. Attached hereto as Exhibit 'A' is the list of witnesses that I told defense counsel I still needed to depose in this case during our meeting in August. As can be seen, these names included Steve Fitzpatrick, Patrick McLaughlin, Fr. Oppenheimer and Joseph Sciambra.

4. The name of Paul Hornak was also very familiar to defense counsel in this case because his statements have been produced in discovery. Likewise, the statements of Joseph Sciambra, Patrick McLaughlin and Steve Fitzpatrick were produced in discovery. Therefore, none of the witnesses deposed during the week of November 10 were in any way a surprise to defendants.

5. Attached hereto as Exhibit 'B' is a copy of the Notice of the Depositions of Fr. Oppenheimer, Steve Fitzpatrick and Patrick McLaughlin mailed to defense counsel on October 30, 2003.

6. Attached hereto as Exhibit 'C' is a copy of the Notice of Deposition of Joseph Sciambra faxed and mailed to defense counsel on November 5, 2003.

7. Attached hereto as Exhibit 'D' is a copy of the Notice of Deposition faxed and mailed to defense counsel on November 6, 2003.

8. Because attorney Sal Cognito had expressed an opposition to additional telephone depositions without the ability to see the witness, I arranged to have the depositions conducted by way of videoconference. Attached hereto as Exhibit 'E' are the four invoices reflecting the amount paid by the undersigned to the Proximity videoconferencing firm in order to enable defense counsel to observe the witnesses during these depositions. In addition to the \$4487.90 reflected in those invoices, plaintiffs' counsel will also have to pay the court reporter attendance and transcription fees for these depositions.

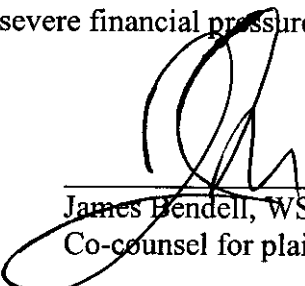
9. Absolutely no objection to these depositions was received by plaintiffs' counsel until a letter from Sal Cognito was faxed to the undersigned during the Friday before his Sunday, November 9 flight to Scranton (Exhibit 'F'). No specific details regarding the objection are provided in said letter. The undersigned counsel's response letter to

Cognetti's letter was faxed to him and other defense counsel on Saturday, November 8 (Exhibit 'G').

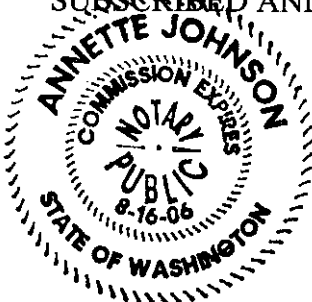
10. At the commencement of the depositions during the week of November 10, defense counsel objected to these depositions being labelled perpetuation depositions. In an effort to address that concern, the undersigned counsel stated that the depositions would simply be considered normal depositions.

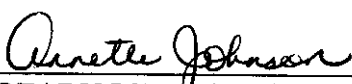
11. Following my return to my office, I sent defense counsel the enclosed stipulation (Exhibit 'H') which would reaffirm that the depositions were to be considered ordinary depositions. None of the defense counsel returned the stipulation signed nor gave a reason why they would not sign it.

12. I would draw the court's attention the Affidavit of James Bendell dated ~~November~~ <sup>OCTOBER</sup> 27, 2003 regarding Matthew Selinger. Based upon the information in that letter, coupled with the information provided in this affidavit, it is the opinion of the undersigned, based additionally upon 28 years of litigation experience and litigating and investigating the Catholic dioceses of the United States, that the objects of defendants in this case have been interposed in bad faith and for the purpose of denying plaintiffs a fair trial in this case and to cause plaintiffs to experience severe financial pressure so as to be unable to continue this litigation.

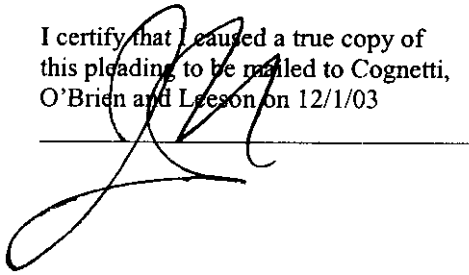
  
James Bendell, WSBA # 20820  
Co-counsel for plaintiffs

SUBSCRIBED AND SWORN to before me this 1<sup>st</sup> day of December, 2003.



  
NOTARY PUBLIC residing at Port Ludlow, wa.  
My commission expires 8-16-06

I certify that I caused a true copy of  
this pleading to be mailed to Cognetti,  
O'Brien and Leeson on 12/1/03

A handwritten signature in black ink, appearing to be "J. Benfell", is written over a horizontal line.

# FUTURE POSITIONS

— MUMFORD

MATI SCLINGER — PITTSBURGH

FR. DEVLANS

BISHOP TIMLIN

BISHOP DOUGHERTY

JOHN CLARK

STEVE FITZPATRICK — T.A. COLLEGE

JOE SCHIAMBRA — NAPA, CA

LUKE COLLET — DALLAS

FRON FRASER — FRONT ROYAL, VA

PATRICK McLAUGHLIN — T.A.C.

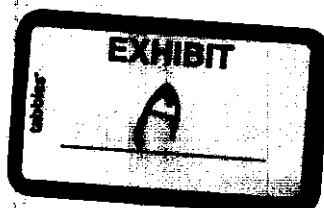
BROTHER ISAAC

FR. OPPENHEIMER — LACROSSE, WI

DAN + SUE RICE —

JEFF BOND

FR MUNKET



IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN DOE, JOHN DOE, SR. and JANE  
DOE,

Case No.: 3 CV 02-0444

Plaintiff,

vs.

FATHER ERIC ENSEY, FATHER  
CARLOS URRUTIGOITY, DIOCESE OF  
SCRANTON, BISHOP JAMES C. TIMLIN,  
THE SOCIETY OF ST. JOHN, THE  
PRIESTLY FRATERNITY OF ST. PETER  
and ST. GREGORY'S ACADEMY,

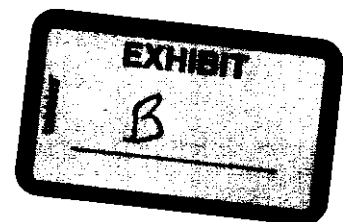
Defendant.

NOTICE OF TAKING VIDEO PERPETUATION DEPOSITIONS ON ORAL  
EXAMINATION

NOTICE IS HEREBY GIVEN that, pursuant to the Federal Rules of Civil Procedure,  
video depositions to be used at trial will be taken before a notary public or other person  
authorized by law to administer oaths pursuant to the following schedule.

Fr. Daniel Oppenheimer -- November 10, 2003 at 10:00 a.m. Eastern time at the  
video-conferencing facility at Marywood University, 2300 Adams Avenue, Learning  
Resources Center, Room 274, Scranton, PA 18509.

Steve Fitzpatrick -- November 10, 2003 at 1:00 p.m. Eastern time at the  
same location.



Patrick McLaughlin -- November 10, 2003 at 2:00 p.m. Eastern time at the same location.

Said depositions will continue until completed.

Dated this 30<sup>th</sup> day of October, 2003.

---

James Bendell, WSBA # 20820  
Co-counsel for plaintiffs

I certify that I caused a true copy of this pleading to be mailed to Cognetti, Leeson, and O'Brien on 10/30/03

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IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN DOE, JOHN DOE, SR. and JANE  
DOE,

Case No.: 3 CV 02-0444

Plaintiff,

vs.

FATHER ERIC ENSEY, FATHER  
CARLOS URRUTIGOITY, DIOCESE OF  
SCRANTON, BISHOP JAMES C. TIMLIN,  
THE SOCIETY OF ST. JOHN, THE  
PRIESTLY FRATERNITY OF ST. PETER  
and ST. GREGORY'S ACADEMY,

Defendant.

NOTICE OF TAKING VIDEO PERPETUATION DEPOSITIONS ON ORAL  
EXAMINATION

NOTICE IS HEREBY GIVEN that, pursuant to the Federal Rules of Civil Procedure,  
video depositions to be used at trial will be taken before a notary public or other person  
authorized by law to administer oaths pursuant to the following schedule.

Joseph Sciambra

-- November 12, 2003 at noon. Eastern time at

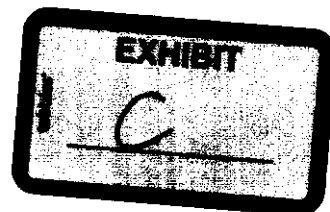
Marywood University, 2300 Adams Ave., Learning Center, Room 274, Scranton, PA

18509. Mr. Sciambra will attend by videoconference from Santa Rosa, CA.

Said deposition will continue until completed.

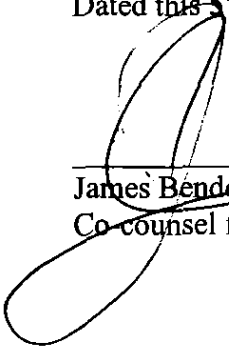
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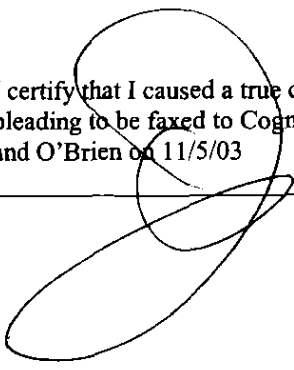




Dated this 5<sup>th</sup> day of November, 2003.



James Bendell, WSBA # 20820  
Co-counsel for plaintiffs



I certify that I caused a true copy of this  
pleading to be faxed to Cognetti, Leeson,  
and O'Brien on 11/5/03

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN DOE, JOHN DOE, SR. and JANE  
DOE,

Plaintiff,

vs.

FATHER ERIC ENSEY, FATHER  
CARLOS URRUTIGOITY, DIOCESE OF  
SCRANTON, BISHOP JAMES C. TIMLIN,  
THE SOCIETY OF ST. JOHN, THE  
PRIESTLY FRATERNITY OF ST. PETER  
and ST. GREGORY'S ACADEMY,

Defendant.

Case No.: 3 CV 02-0444

NOTICE OF TAKING VIDEO PERPETUATION DEPOSITIONS ON ORAL  
EXAMINATION

NOTICE IS HEREBY GIVEN that, pursuant to the Federal Rules of Civil Procedure, a  
video deposition to be used at trial will be taken before a notary public or other person  
authorized by law to administer oaths pursuant to the following schedule.

Paul Hornak -- November 11, 2003 at 2:00 p.m. Eastern time at Marywood  
University, 2300 Adams Ave., Learning Center, Room 274, Scranton, PA 18509. Mr.  
Hornak will attend by videoconference from Watertown, NY.

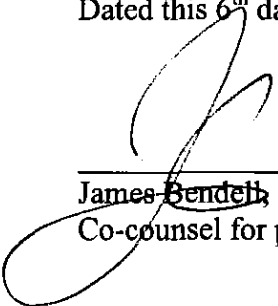
Said deposition will continue until completed.

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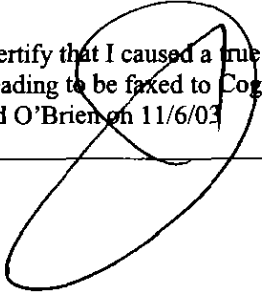


Dated this 6<sup>th</sup> day of November, 2003.

---

James Bendell, WSBA # 20820  
Co-counsel for plaintiffs

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I certify that I caused a true copy of this  
pleading to be faxed to Cognetti, Leeson,  
and O'Brien on 11/6/03

PO Box 1008  
 Burlington, VT 05402-1008 USA  
 tel 802.264.2900 fax 802.264.2999  
 accounting@proximity.com

# PROXIMITY

MAKING  
 DISTANCE  
 OBSOLETE

## INVOICE

DATE	INVOICE NO.
Nov-14-2003	26249

<b>BILL TO</b>
James Bendell, Attorney at Law Attn: James Bendell P.O. Box 587 Port Townsend, WA 98368

<b>VIDEOCONFERENCE</b>
La Crosse - Scranton

P.O. #	Reservation #	Conf Date	Conf Time (NYT)	Sales Rep	Acct Rep	Terms
Mastercard	29637	10-Nov-03	10:00 - 12:00		MLB	M/C

DESCRIPTION	QTY	RATE	AMOUNT
Scheduling fee, per room, per conference, La Crosse & Scranton	2.00	50.00	100.00
Videoconferencing room rental, per hour, La Crosse	2.00	225.00	450.00
Videoconferencing room rental, per hour, Scranton	2.00	225.00	450.00
Telecom, 6 channels (336 - 384 kbps), per hour, Scranton	1.50	120.00	180.00
Local, Federal and State Taxes	1.00	30.75	30.75

**PAID**



This invoice has been paid by MasterCard.	<b>Total</b>	<b>\$1,210.75</b>
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PO Box 1008  
 Burlington, VT 05402-1008 USA  
 tel 802.264.2900 fax 802.264.2999  
 accounting@proximity.com

# PROXIMITY

MAKING  
 DISTANCE  
 OBSOLETE

## INVOICE

DATE	INVOICE NO.
Nov-14-2003	26250

<b>BILL TO</b>
James Bendell, Attorney at Law Attn: James Bendell P.O. Box 587 Port Townsend, WA 98368

<b>VIDEOCONFERENCE</b>
Scranton - Ventura

P.O. #	Reservation #	Conf Date	Conf Time (NYT)	Sales Rep	Acct Rep	Terms
VISA	29675	10-Nov-03	13:00 - 15:00		MLB	VISA

DESCRIPTION	QTY	RATE	AMOUNT
Scheduling fee, per room, per conference, Scranton & Ventura	2.00	50.00	100.00
Videoconferencing room rental, per hour, Scranton	1.50	225.00	337.50
Telecom, 6 channels (336 - 384 kbps), per hour, Scranton	1.50	120.00	180.00
Videoconferencing room rental, per hour, Ventura	1.50	200.00	300.00
VHS Video Taping (includes shipping), Ventura	2.00	55.00	110.00
Local, Federal and State Taxes	1.00	22.50	22.50
<b>PAID</b>			
	2.00	50.00	100.00
	1.50	225.00	337.50
	1.50	120.00	180.00
	1.50	200.00	300.00
	2.00	55.00	110.00
	1.00	22.50	22.50
This invoice has been paid by Visa.	<b>Total</b>		<b>\$1,050.00</b>

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 Burlington, VT 05402-1008 USA  
 tel 802.264.2900 fax 802.264.2999  
 accounting@proximity.com

# PROXIMITY

MAKING  
 DISTANCE  
 OBSOLETE

## INVOICE

DATE	INVOICE NO.
Nov-14-2003	26258

<b>BILL TO</b>
James Bendell, Attorney at Law Attn: James Bendell P.O. Box 587 Port Townsend, WA 98368

<b>VIDEOCONFERENCE</b>
Scranton - Watertown

P.O. #	Reservation #	Conf Date	Conf Time (NYT)	Sales Rep	Acct Rep	Terms
VISA	29758	11-Nov-03	14:00 - 16:00		MLB	VISA

DESCRIPTION	QTY	RATE	AMOUNT
Scheduling fee, per room, per conference, Scranton & Watertown	2.00	50.00	100.00
Videoconferencing room rental, per hour, Scranton	1.00	225.00	225.00
Bridge plus telecom, 6 channels (336 - 384 kbps), per hour, Scranton	1.25	110.00	137.50
Videoconferencing room rental, per hour, Watertown	1.00	175.00	175.00
Bridge plus telecom, 6 channels (336 - 384 kbps), per hour, Watertown	1.25	110.00	137.50
Local, Federal and State Taxes	1.00	22.15	22.15

**PAID**

This invoice has been paid by Visa.

**Total \$797.15**

PO Box 1008  
 Burlington, VT 05402-1008 USA  
 tel 802.264.2900 fax 802.264.2999  
 accounting@proximity.com

# PROXIMITY

MAKING  
 DISTANCE  
 OBSOLETE

## INVOICE

DATE	INVOICE NO.
Nov-14-2003	26259

<b>BILL TO</b>
James Bendell, Attorney at Law Attn: James Bendell P.O. Box 587 Port Townsend, WA 98368

<b>VIDEOCONFERENCE</b>
Santa Rosa - Scranton

P.O. #	Reservation #	Conf Date	Conf Time (NYT)	Sales Rep	Acct Rep	Terms
VISA	29743	12-Nov-03	12:00 - 14:35		MLB	VISA

DESCRIPTION	QTY	RATE	AMOUNT
Scheduling fee, per room, per conference, Santa Rosa & Scranton	2.00	50.00	100.00
Videoconferencing room rental, per hour, Santa Rosa	2.50	175.00	437.50
Videoconferencing room rental, per hour, Scranton	2.50	225.00	562.50
Telecom, 6 channels (336 - 384 kbps), per hour, Scranton	2.50	120.00	300.00
Local, Federal and State Taxes	1.00	30.00	30.00

**PAID**

This invoice has been paid by Visa.

**Total**

**\$1,430.00**

LAW OFFICES

**FOLEY, COGNETTI, COMERFORD & CIMINI**

500 SCRANTON ELECTRIC BUILDING  
507 LINDEN STREET  
SCRANTON, PENNSYLVANIA 18503-1666

TIMOTHY E. FOLEY  
SAL COGNETTI, JR.  
THOMAS P. COMERFORD  
VINCENT S. CIMINI  
DANIEL E. CUMMINS

(570) 346-0745  
FAX (570) 346-0776

November 7, 2003

JOHN W. BOUR  
(1956-1993)  
JOSEPH E. GALLAGHER  
(1956-1991)

Harry T. Coleman, Esquire  
148 Adams Avenue  
Courthouse Square  
Scranton, PA 18503

James M. Bendell, Esquire  
Post Office Box 587  
Port Townsend, WA 98368

**Via Facsimile**

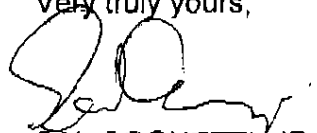
RE: Doe v. Ensey, et al.  
Our File No.: 14716

Dear Gentlemen:

I realize it is the eleventh hour. Having returned from what I thought to be a peaceful vacation, I see your numerous faxes and contradictory notices of deposition. First, we never agreed to the depositions being taken the way you proposed, nor are they being done pursuant to our request. Second, the Court has scheduled a discovery conference on the 18th of November. We believe that all depositions should be canceled pending discussion with the Court, and that the discovery and trial dates be extended so that after the Court provides us with clarification as to the method of the deposition of people, both parties have ample time to schedule the depositions and prepare notices.

If necessary, we will request an earlier conference with the Court.

Very truly yours,

  
SAL COGNETTI, JR.

SCJR/dlk

cc: James O'Brien, Esquire (via facsimile)  
Joseph Leeson, Esquire (via facsimile)  
The Honorable Joseph E. Jones, III (via facsimile)







JAMES M. BENDELL

ATTORNEY AT LAW



2535 IVY STREET • POST OFFICE BOX 587 • PORT TOWNSEND, WA 98368 • (360) 379-5221

**By Facsimile only**

November 8, 2003

Sal Cagnetti, Jr. 570-346-0776  
Vincent B. Cimini  
Foley, Cagnetti, Comverford & Cimini  
700 Scranton Electric Building  
507 Linden Street  
Scranton, PA 18503-1666

RE: Doe v. Diocese of Scranton et al  
No. 3:02cv444

Dear Mr. Cagnetti:

This letter is in response to your fax of yesterday.

As you know by now I was in another city attending a CLE seminar when you faxed the letter in question. Therefore I would not say that your request was an eleventh hour request, but more like five minutes before midnight.

Because your letter was copied to the judge I feel it necessary to point out several facts that might not have occurred to you to put in the letter.

First, the time for these November depositions was agreed upon by all counsel during late August. Second, it was my desire to fly to each of the individual cities where these witnesses live in order to take their depositions. The defense strenuously opposed this format unless I paid for the travel costs of all three defense firms. Therefore, to accommodate your disinclination to travel and your additional request that you have the ability to observe the deponents' appearance, I have arranged to have these depositions conducted by videoconference. I should point out that this is being undertaken at some great expense to me. I am being charged \$200 per hour for the depositions, plus the "set up" fees (this is in addition to the videographer fee and court reporter fee). Along with my airfare to Scranton on Sunday, much of this cost is non-refundable. I have also incurred significant expense in subpoenaing witnesses throughout the United States to attend at the various videoconference centers near the witnesses' residence. Finally, the last time I wished to depose Fr. Devillers he was in France. I certainly do not want to lose this opportunity to depose him while he is in the United States.



NOVEMBER 8, 2003 LETTER TO SAL COGNETTI – PAGE 2

Your letter also refers to a 'contradictory' deposition schedule. There is no contradiction whatsoever. However, just to make sure, here are the times:

Monday	10:00 a.m.	Fr. Oppenheimer
	1:00 p.m.	Steve Fitzpatrick
	2:00 p.m.	Patrick McLaughlin
Tuesday	10:00 a.m.	Fr. Devillers
	2:00 p.m.	Paul Hornak
Wednesday	noon	Joseph Sciambra

If, after these depositions, you feel that your clients rights have been prejudiced you are perfectly free to file a motion seeking to have the court rule the depositions are a nullity. However, to try to arrange this by a on-the-fly discovery phone while I am in Scranton next week is grossly unfair given the expenses I have incurred. Moreover, your comment that you just returned from vacation ignores the fact that your partner Vincent Cimini has been actively involved in this case and attending most of the depositions with you.

Sincerely,



James Bendell

cc: Joseph Leeson, Esq. (fax)  
James O'Brien, Esq. (fax)  
Harry Coleman, Esq. (fax)  
Hon. Joseph E. Jones (fax)

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN DOE, JOHN DOE, SR. and JANE  
DOE,

Plaintiff,

vs.

FATHER ERIC ENSEY, FATHER  
CARLOS URRUTIGOITY, DIOCESE OF  
SCRANTON, BISHOP JAMES C. TIMLIN,  
THE SOCIETY OF ST. JOHN, THE  
PRIESTLY FRATERNITY OF ST. PETER  
and ST. GREGORY'S ACADEMY,

Defendant.

Case No.: 3 CV 02-0444

STIPULATION

COME NOW parties to this action, by and through counsel, and stipulate that the depositions of Steven Fitzpatrick, Patrick McLaughlin, Paul Hornak and Joseph Sciambra, taken during the week of November 10, 2003, constitute depositions lawfully taken pursuant to the provisions of Federal Civil Rule 30 and can be used in this case according to the provisions of Federal Civil rule 32.

Dated this \_\_\_\_ day of November, 2003

\_\_\_\_\_  
Sal Cognito  
Attorney for Society of St. John,  
Fr. Carlos Urritigoity and Fr. Eric  
Ensey

Dated this \_\_\_\_ day of November, 2003

\_\_\_\_\_  
James O'Brien  
Attorney for Diocese of Scranton



Dated this \_\_\_\_ day of November, 2003

\_\_\_\_\_  
Joseph Leeson  
Attorney for Fraternity of St. Peter

Dated this \_\_ day of November, 2003

\_\_\_\_\_  
James Bendell  
Co-counsel for Plaintiffs